

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED JUNE 25, 1996

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
AMERICAN NATIONAL CAN CO.)	
)	
and)	
)	Filed
KMK MASCHINEN AG,)	
)	
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on June 25, 1996; plaintiff and defendants, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law herein.

Z Now, therefore, before the taking of any testimony and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The

Complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used in this Final Judgment:

A. "agreement" means any contract, arrangement, or understanding, whether oral or written, or any term or provision thereof, together with any modification or amendment thereto;

B. "laminated tube" means a collapsible, squeeze-to-use tubular package with a sideseam that consists of a body of multiple laminated plastic layers separated by a layer of either plastic or aluminum foil that serves as a barrier to moisture, light, gases, or other agents; a tube head attached to the body; and may include a cap;

C. "laminated tube-making equipment" means machinery, apparatus, or devices for making and/or assembling laminated tubes, including forming a tube head, sealing or otherwise connecting it to a laminated tube body, or capping the laminated tube;

D. "laminated tube-making technology" means any form of intellectual property relating to (i) the design, development, construction, or operation of laminated tube-making equipment or any component, feature, or use thereof; (ii) the fabrication of laminated tubes or any component thereof; or (iii) the material used in making laminated tubes; but only to the extent such

component, feature, use, or material relates to laminated tubes and not to other types of packaging;

E. "North America" means the United States of America, Canada, and the United Mexican States.

III.

APPLICABILITY

This Final Judgment applies to each defendant; to each of its officers, directors, agents, employees, successors, assigns, subsidiaries, divisions, and any other organizational unit controlled by either defendant; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

INJUNCTIVE RELIEF

Each defendant is enjoined and prohibited from:

A. Maintaining, enforcing, carrying out, or claiming any right or operating under the 1987 License and Technical Assistance Agreement (LTAA) between American National Can Co. and KMK Karl Maegerle Lizenz AG;

B. Collecting or attempting to collect any royalties, fees, or other payments under the LTAA for (i) the manufacture, sale, or use in North America of laminated tubes or laminated tube-making equipment or (ii) the license, sale, or use in North America of laminated tube-making technology;

C. Entering into, maintaining, enforcing, carrying out, or claiming any right under any agreement with any person who

(1) owns or has the right to use, license, and transfer laminated tube-making technology that restricts the right of any party to the agreement to use, license, or transfer in North America laminated tube-making technology that it owns or has the right to use at the time of the agreement,

(2) manufactures or sells laminated tube-making equipment that restricts the right of any party to the agreement to manufacture or sell such equipment in North America using or incorporating only laminated tube-making technology that it owns or has the right to use at the time of the agreement, or

(3) manufactures or sells laminated tubes in North America that restricts the right of any party to the agreement to manufacture or sell, but not use, laminated tubes in North America.

The prohibitions of this Section IV.C shall not apply to either defendant's acquisition of substantially all of any person's assets or voting securities relating to laminated tube-making equipment or technology, provided that (1) the defendant gives the Antitrust Division of the United States Department of Justice written notice of the proposed acquisition at least 30 days prior to its consummation, and (2) if within that 30-day period the Antitrust Division requests additional information and/or documentary material relevant to the proposed acquisition, the

defendant extends the consummation thereof for at least an additional 20 days after the date on which the Antitrust Division receives all the information and documentary material requested from the defendant.

V.

NOTIFICATION

Within 60 days of entry, each defendant shall provide a copy of this Final Judgment by mail or personal service to its officers, directors, and managerial employees responsible for defendant's laminated tubes and/or laminated tube-making equipment or technology businesses, and to its current laminated tube-making technology licensees in North America. Thereafter, each defendant shall distribute a copy of this Final Judgment to any new such officer, director, or managerial employee within 60 days of a person's assumption of duties as an officer, director, or manager of that defendant.

VI.

COMPLIANCE INFORMATION

A. To determine or secure compliance with this Final Judgment, from time to time, duly authorized representatives of plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to a defendant at its principal office and subject to any lawful privilege, shall be permitted:

1. access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the defendant's possession, custody, and control relating to any matters contained in this Final Judgment; and

2. to interview the defendant's officers, employees, or agents regarding such matters, who may have counsel present, subject to the defendant's reasonable convenience but without its restraint or interference.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division to a defendant's principal office, and subject to any lawful privilege, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment, as may be requested.

C. No information or documents obtained pursuant to this section shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7)

of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give 10 days' notice to the defendant before divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

VII.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for further orders or directions as may be necessary or appropriate to implement or construe this Final Judgment, to modify or terminate any provision thereof, to enforce compliance therewith, and to punish violations thereof.

VIII.

TERM

This Final Judgment shall expire ten years from the date of its entry.

IX.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

DATED: _____

Court approval subject to
the Antitrust Procedures and
Penalties Act, 15 U.S.C. § 16.

UNITED STATES DISTRICT JUDGE